

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Request for Initiation of Proceeding)	RM-10613
Into Character of WorldCom, Inc. and)	
Other Commission Licensees)	

**OPPOSITION OF THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF WORLDCOM, INC., ET AL.**

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January 31, 2003

EXECUTIVE SUMMARY

The Official Committee of Unsecured Creditors of WorldCom, Inc., et al. (“Committee”) urges the Federal Communications Commission (“Commission”) to dismiss or deny the Petition for Rulemaking and Request for Initiation of § 403 Proceeding into Character of WorldCom, Inc. and Other Commission Licensees (“Petition”) submitted by the Office of Communication of the United Church of Christ (“OC-UCC”) because OC-UCC’s proposals that the Commission initiate a rulemaking proceeding and conduct an investigation are not justified. First, the Petition fails to meet the Commission’s standard for initiation of a rulemaking proceeding because it does not provide sufficient reasons to justify the requested rulemaking.¹ As a preliminary matter, OC-UCC’s proposal that the Commission extend application of its broadcast character policy requirements (“Character Policy Requirements”)² to all telecommunications providers operating pursuant to Commission authorization is based on a fundamental mischaracterization of Commission rules and policy. The Character Policy Requirements were not designed to be applied to common carriers, nor could such requirements or similar requirements appropriately be applied to common carriers. Further, OC-UCC’s proposed regulatory scheme is outside the Commission’s area of expertise and is clearly duplicative of the responsibilities of other government agencies tasked with the enforcement of accounting, securities, and corporate governance laws and regulations. Second, the initiation of a Section 403 investigation during the pendency of WorldCom’s reorganization in bankruptcy holds no potential benefit for the public, which was not harmed by WorldCom’s accounting problems, but has great potential to harm WorldCom, which will, in turn, harm telecommunications competition and the public. Further,

¹ 47 C.F.R. § 1.407 (“If the Commission determines that the petition discloses sufficient reasons in support of the action requested to justify the institution of a rulemaking proceeding . . . an appropriate notice of proposed rulemaking will be issued”).

² See Character Policy Requirements, *supra* note 12.

an investigation of WorldCom under Section 403 of the Commission's rules is unnecessary and inappropriate in light of WorldCom's continued service of the public interest and the steps WorldCom has taken in recent months to correct past deficiencies.

TABLE OF CONTENTS

I.	Introduction.....	1
II.	Procedural Background.....	3
	A. WorldCom Chapter 11 Filing and Related FCC Filings.....	3
	B. UCC Response to WorldCom’s FCC Filings	4
III.	OC-UCC’s Request That the Commission Initiate a Rulemaking Proceeding regarding Character Qualifications should be Denied because the Petition does Not Meet the Commission’s Legal Requirements for the Institution of a Rulemaking Proceeding	5
	A. The Petition should be Denied because OC-UCC’s Attempt to Extend the Commission’s Character Policy Qualifications to all Telecommunications Providers Holding Commission Authorizations rests on a Fundamental Misstatement of Commission Rules and Policy	6
	B. The Petition Must be Denied because it has Failed to Meet the FCC’s Requirements for Initiating a Rulemaking Proceeding.....	9
IV.	The Commission should Not Initiate a Section 403 Investigation of Worldcom because Worldcom is Operating in the Public Interest.....	11
	A. An Investigation under Section 403 will Not Benefit Consumers and could Adversely Affect WorldCom, which has Consistently Acted to Further the Public Interest through the Provision of Competitively Priced, High Quality, Innovative Telecommunications Services	12
	B. OC-UCC’s Request for a Section 403 Investigation should be Denied because WorldCom has taken Prompt Corrective Action	14
V.	Conclusion	18

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I. INTRODUCTION

The Official Committee (“Committee”) of Unsecured Creditors of WorldCom, Inc., et al. (collectively, “WorldCom”), by its attorneys and pursuant to Section 1.405(a) of the rules of the Federal Communications Commission (“FCC” or “Commission”),³ respectfully submits this opposition (“Opposition”) to the Petition for Rulemaking and Request for Initiation of § 403 Proceeding into Character of WorldCom, Inc. and Other Commission Licensees (“Petition”) filed on October 15, 2002 by the Office of Communication of the United Church of Christ (“OC-UCC”).⁴

The Committee is an interested party in this proceeding. The Committee is a statutorily created committee appointed by the Office of the United States Trustee in connection with WorldCom’s bankruptcy cases and is charged with a fiduciary duty to all unsecured creditors of

³ 47 C.F.R. § 1.405(a).

⁴ See *Petition for Rulemaking and Request for Initiation of §403 Proceeding into the Character of WorldCom, Inc. and other Commission Licensees, filed by the Office of Communication of the United Church of Christ, Inc.* (filed Oct. 15, 2002). On December 5, 2002, the Consumer and Governmental Affairs Bureau (“Bureau”) issued a public notice (“Notice”) indicating that interested persons should file statements with the Commission opposing or supporting the Petition.

WorldCom. In general, the unsecured creditors' ability to receive value on the substantial debt they are owed by WorldCom is likely to be largely affected by WorldCom's post-bankruptcy value as a going concern, which is, in part, dependent on the company's reputation and the regulatory environment in which it operates. The proposals in the Petition, if enacted, would significantly and detrimentally affect the Committee and its constituency because these proposals unfairly single out WorldCom for public scrutiny and would subject all common carriers, including WorldCom, to additional unnecessary regulatory burdens.

As further outlined herein, the Committee urges the Commission to dismiss or deny the Petition because OC-UCC's proposals that the Commission initiate a rulemaking proceeding and conduct an investigation are unwarranted and inappropriate. First, the Petition fails to meet the Commission's standard for initiation of a rulemaking proceeding because it does not provide sufficient reasons to justify the requested rulemaking.⁵ As a preliminary matter, OC-UCC's proposal that the Commission extend application of its character policy requirements ("Character Policy Requirements")⁶ to all telecommunications providers operating pursuant to Commission authorization is based on a fundamental mischaracterization of Commission rules and policy. The Character Policy Requirements were not designed to be applied to common carriers, nor could such requirements or similar requirements appropriately be applied to common carriers. Further, the proposed regulatory scheme is outside the Commission's area of expertise and is clearly duplicative of the responsibilities of other government agencies, such as the U.S. Securities and Exchange Commission ("SEC"), the U.S. Department of Justice ("DOJ"), and the courts, tasked with the enforcement of accounting, securities, and corporate governance laws and

⁵ 47 C.F.R. § 1.407 ("If the Commission determines that the petition discloses sufficient reasons in support of the action requested to justify the institution of a rulemaking proceeding . . . an appropriate notice of proposed rulemaking will be issued").

⁶ See Character Policy Requirements, *supra* note 12.

regulations. Second, the initiation of a Section 403 investigation during the pendency of WorldCom's reorganization in bankruptcy holds no potential benefit for the public, which was not harmed by WorldCom's accounting problems, but has great potential to harm WorldCom, which will, in turn, harm telecommunications competition and the public. Further, an investigation of WorldCom under Section 403 of the Commission's rules is unnecessary and inappropriate in light of WorldCom's continued service of the public interest and the steps WorldCom has taken in recent months to correct past deficiencies.

For the foregoing reasons, as explained in more detail below, the Committee respectfully requests that the Commission dismiss or deny the Petition and refrain from initiating either an investigation of WorldCom or a rulemaking proceeding regarding the character qualifications of common carriers.

II. PROCEDURAL BACKGROUND

A. WorldCom Chapter 11 Filing and Related FCC Filings

Over the past twenty years, WorldCom has emerged as one of the nation's premier telecommunications companies.⁷ On July 21, 2002, WorldCom and substantially all of its active U.S. subsidiaries filed voluntary petitions for reorganization under Chapter 11 of the U.S. Bankruptcy Code with the Bankruptcy Court in the Southern District of New York (the "Bankruptcy Court").⁸ As a result of WorldCom's Chapter 11 filing, its legal status changed to that of "debtor-in-possession." Consequently, pursuant to sections 214 and 310(d) of the

⁷ In November 1983, WorldCom, then known as LDDS, began reselling telecommunications services to small and mid-sized local businesses in Hattiesburg, Mississippi. By December 1992, WorldCom was the fourth-largest long-distance provider in the country. WorldCom's 1998 merger with MCI created a new company which provides customers in over 65 countries with a full array of facilities-based, fully integrated data, Internet, local and international telecommunications services.

⁸ *In re WorldCom Inc.*, docketed under case # 02-13533.

Communications Act of 1934, as amended (“Act”),⁹ WorldCom filed applications and notifications (collectively, “Applications”) seeking the Commission’s approval of the involuntary *pro forma* assignment of the licenses and authorizations held by WorldCom and its subsidiaries to WorldCom and those subsidiaries as debtors-in-possession.

B. UCC Response to WorldCom’s FCC Filings

On October 15, 2002, OC-UCC filed with the Commission two documents in response to WorldCom’s Applications. First, OC-UCC filed an informal objection (“Informal Objection”) to the Applications.¹⁰ The Informal Objection was denied in a December 5, 2002, public notice, in which the Wireless Telecommunications Bureau granted WorldCom’s Applications.¹¹ Second, OC-UCC filed the Petition, which requested that the Commission (i) issue a Notice of Proposed Rulemaking (“NPRM”) seeking comment on the establishment of new standards of conduct based on the Commission’s Character Policy Qualifications¹² for all telecommunications providers holding FCC authorizations, and (ii) initiate an investigation of WorldCom pursuant to Section 403 of the Act¹³ (a “Section 403 investigation”).¹⁴

⁹ 47 U.S.C. §§ 214, 310(d).

¹⁰ See *Informal Objection to Assignment Applications, filed by the Office of Communication of the United Church of Christ, Inc.* (Oct. 15, 2002).

¹¹ Wireless Telecommunications Bureau, *Wireless Telecommunications Bureau Grants Applications for Assignment of Licenses to WorldCom, Inc. and its Subsidiaries as Debtors in Possession*, WC Docket No. 02-215, DA 02-3350 (Dec. 5, 2002).

¹² *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179 (1986), on reconsideration, 1 FCC Rcd 421 (1986), appeal dismissed sub nom. *National Association for Better Broadcasting v. FCC*, No. 86-1179 (D.C. Cir. June 11, 1987) (“Character Policy Qualifications”). See also *Policy Regarding Character Qualifications in Broadcast Licensing*, 5 FCC Rcd 3252 (1990), on reconsideration, 6 FCC Rcd 3448 (1991), modified, 7 FCC Rcd 6564 (1992).

¹³ 47 U.S.C. § 403.

¹⁴ OC-UCC purports to seek an investigation of “other entities such as Qwest and Global Crossing” as well as WorldCom. *Petition* at 30. However, the Petition focuses on WorldCom to the exclusion of other providers.

III. OC-UCC’S REQUEST THAT THE COMMISSION INITIATE A RULEMAKING PROCEEDING REGARDING CHARACTER QUALIFICATIONS SHOULD BE DENIED BECAUSE THE PETITION DOES NOT MEET THE COMMISSION’S LEGAL REQUIREMENTS FOR THE INSTITUTION OF A RULEMAKING PROCEEDING

OC-UCC’s Petition fails to meet the Commission’s legal standard for the initiation of a rulemaking proceeding to impose character qualifications on all telecommunications providers, and should be dismissed or denied. Section 1.407 of the Commission’s rules provides that a petition failing to disclose “sufficient reasons in support of the action requested to justify the institution of a rulemaking proceeding” shall not be granted.¹⁵ The Petition does not meet the standard of Section 1.407 for at least two reasons. As further explained below, OC-UCC’s assertion that the Commission’s Character Policy Qualifications generally are applied to all telecommunications providers represents a fundamental mischaracterization of the Commission’s rules and policies.¹⁶ Contrary to OC-UCC’s assertion, the Character Policy Qualifications were adopted to apply specifically to broadcast licensees, and the Commission does not, as a matter of law or policy, apply them outside the broadcast context.¹⁷ Thus, the premise of OC-UCC’s request for initiation of a rulemaking proceeding, i.e., that the Character Policy Qualifications as applied to common carriers will provide a basis for such proceeding, is inherently flawed. Further, the proposed regulatory scheme is outside the Commission’s area of expertise and is clearly duplicative of the responsibilities of other government agencies tasked with the enforcement of accounting, securities, and corporate governance laws and regulations.

¹⁵ 47 C.F.R. § 1.407.

¹⁶ Petition at 16-17.

¹⁷ *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179 n.52 (1986), *on reconsideration*, 1 FCC Rcd 421 (1986), *appeal dismissed sub nom. National Association for Better Broadcasting v FCC*, No. 86-1179 (D.C. Cir. June 11, 1987).

A. The Petition should be Denied because OC-UCC's Attempt to Extend the Commission's Character Policy Qualifications to all Telecommunications Providers Holding Commission Authorizations rests on a Fundamental Misstatement of Commission Rules and Policy

OC-UCC has premised its request that the Commission initiate a rulemaking proceeding on the idea that the Commission regularly imposes the Character Policy Requirements on *all* Commission licensees, including common carriers such as WorldCom, which are regulated under Title II of the Telecommunications Act. This premise is fundamentally flawed and cannot support OC-UCC's request. OC-UCC has conveniently ignored the fact that the FCC has explicitly stated on numerous occasions that the Character Policy Qualifications were drafted specifically for application to broadcast licensees and broadcast applicants, and were not intended to be applied to common carriers because of the very different policy considerations that must be taken into account in the broadcasting context. The OC-UCC further fails to consider that, in the few instances where the FCC has referenced the Character Policy Qualifications in the non-broadcast context, it has done so only to the extent that the Character Policy Requirements could provide *guidance* in the context of a particular query.

For more than twenty years, since the issuance of the Notice of Inquiry for Policy Regarding Character Qualifications in Broadcast Licensing ("NOI"),¹⁸ the Commission has stated that the Character Policy Qualifications were intended to apply solely to broadcast licensees and broadcast applicants. At no time has the Commission indicated, in even the most minimal way, that the Character Policy Qualifications were meant to be imposed on common carriers. Rather, the Commission has "recognized that the policies generally underlying our character inquiry in the broadcasting context are different from those which are raised in the

¹⁸ Notice of Inquiry, *Policy Regarding Character Qualifications in Broadcast Licensing*, 87 FCC 2d 836, 1981 FCC LEXIS 430 (Aug. 6, 1981).

common carrier context.”¹⁹ The Commission further clarified in its subsequent Reconsideration that the “policies apply only to applicants for broadcast licenses,” and that “common carriers are distinguished from broadcasters for purposes of character qualifications because no content regulation is involved and because such issues are adjudicated on a case-by-case basis without the guidance of a specific policy statement.”²⁰

The policy underlying this distinction is clear: Spectrum is a scarce public resource, and a broadcaster has the right to choose the form and substance of the content it broadcasts over the public airwaves pursuant to its license. Broadcasters, therefore, have exclusive use of a limited resource capable of conveying messages to millions of Americans, which resource the Commission is charged with protecting for the public interest.²¹ Common carriers, on the other hand, do not interfere with, let alone control, the content that is distributed over their networks, and are statutorily barred from discriminating against customers based on the content of their communications.²² The Commission has clearly recognized that it is inappropriate, as a matter

¹⁹ *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179 n.52 (1986), *on reconsideration*, 1 FCC Rcd 421 (1986), *appeal dismissed sub nom. National Association for Better Broadcasting v. FCC*, No. 86-1179 (D.C. Cir. June 11, 1987) (citing *Arizona Mobile Telephone Co.*, FCC 83-557, 53 RR 2d 1001, 1017-1018 (April 13, 1983) (character considerations involving tax liens and judgments do not bear the same significance for CARs carriers as they would in broadcast proceedings)).

²⁰ *Policy Regarding Character Qualifications in Broadcast Licensing; Amendment of Rules of Broadcast Practice and Procedure Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Permittees and Licensees*, 1 FCC Rcd 421 ¶18 (1986), *appeal dismissed sub nom. National Association for Better Broadcasting v. FCC*, No. 86-1179 (D.C. Cir. June 11, 1987) (emphasis and footnotes omitted) (“Reconsideration”).

²¹ 47 U.S.C. § 151.

²² 47 U.S.C. § 201(a) (“It shall be the duty of every common carrier engaged in interstate or foreign communication by wire or radio to furnish such communication service upon reasonable request therefor; and, in accordance with the orders of the Commission, in cases where the Commission, after opportunity for hearing, finds such action necessary or desirable in the public interest, to establish physical connections with other carriers, to establish through routes and charges applicable thereto and the divisions of such charges, and to establish and provide facilities and regulations for operating such through routes.”); 47 U.S.C. § 202(a) (“It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.”).

of law and general policy, to apply the rules established in the Character Policy Qualifications to every company operating pursuant to a FCC authorization.

In some circumstances, the Commission may take the misconduct of a Commission licensee into account in a non-broadcast proceeding. However, to the extent the Commission has referenced the Character Policy Qualifications in common carrier proceedings, the qualifications have been used as general guidelines on a case-by-case basis, rather than applied as a matter of law.²³

In no case cited by OC-UCC were the Character Policy Qualifications applied to an applicant because the Commission was required to do so by its rules or Commission precedent. Rather, in the context of a few proceedings in which the applicant or licensee may have committed past wrongdoing, the Commission has looked to the Character Policy Qualifications only for *general guidance* with respect to evaluating the impact that an applicant's wrongdoing should have in the proceeding.²⁴ In attempting to justify the initiation of a rulemaking proceeding, OC-UCC has strained beyond recognition the Commission's holdings in this regard.²⁵

²³ Reconsideration ¶ 18 (“[R]eference is occasionally made in common carrier cases to broadcast policies and precedents as aids in resolving character issues.”).

²⁴ See, e.g., Tempo Satellite, Inc., For Construction Permit for New Direct Broadcast System, 7 FCC Rcd 2728 n.8 (May 1, 1992) (“The policies expressed in the Commission's broadcast character policy statement have been used as *guidance* when passing on the basic qualifications of nonbroadcast licensees.”) (emphasis added); Western Telecommunications, Inc., Petition for Revocation of Operating Authority, 3 FCC Rcd 6405 n.11 (Nov. 1, 1988) (“Although this decision pertained to broadcast licensees, the standards may provide *guidance* in the common carrier area as well.”) (emphasis added).

²⁵ See, e.g., MCI Telecommunications Corp., 3 FCC Rcd 509 n.14 (1998) (“Although not directly applicable to common carriers, the character qualifications standards adopted in the broadcast context can provide *guidance* in the common carrier area as well. In any event, to the extent we were not to use broadcast character standards for guidance in this case, MCI's violation of local ordinances would be of even less significance.”) (citations omitted) (emphasis added) (cited in Petition at note 113); MCI Telecommunications Corporation; for Authority to Construct, Launch and Operate a Direct Broadcasting Satellite System at 110° W.L., 14 FCC Rcd 11077, 11086 (1999) (citing to Tempo Satellite, Inc. and Western Telecommunications, Inc., *supra* note 24 in its discussion of the Character Policy Qualifications).

The fact that the Commission has, on occasion, looked to the Character Policy Qualifications for general guidance when considering misconduct in the non-broadcast conduct does not justify the initiation of a proceeding that is premised on the flawed assertion that the Character Policy Qualifications apply to all companies operating under a FCC authorization. To accept OC-UCC's premise completely ignores more than twenty years of Commission precedent and the fundamental policy differences between common carriers and broadcasters.

B. The Petition Must be Denied because it has Failed to Meet the FCC's Requirements for Initiating a Rulemaking Proceeding

In addition to premising its request for a rulemaking on a mischaracterization of the Commission's rules and policies, OC-UCC has completely failed to demonstrate any need for the proposed rulemaking proceeding. The proposed regulatory scheme is outside the Commission's area of expertise – telecommunications regulation, and is clearly duplicative of the responsibilities of other government agencies tasked with the enforcement of accounting, securities, and corporate governance laws and regulations. WorldCom's accounting irregularities in no way affected WorldCom's provision of service to its customers, and OC-UCC has made no allegations to the contrary. Congress did not act arbitrarily when it tasked the FCC with the responsibility to protect telecommunications consumers and the SEC and other agencies with the responsibility to protect the interests of investors.

OC-UCC argues that a rulemaking proceeding is justified by the need for rules focused specifically on the activities of telecommunications carriers. Yet the "principles" suggested by OC-UCC for the proposed rules focus exclusively on general matters of corporate operation, such as accounting practices, corporate government principals, the selection and retention of external auditors, and the treatment of stock options. These areas clearly are important not just

for telecommunications providers, but for all types of companies. Recognizing their importance, Congress has authorized agencies such as the SEC to implement and enforce regulations in those areas.²⁶ In fact, the OC-UCC's suggested rules bear more than passing resemblance to the recently enacted Sarbanes-Oxley Act of 2002,²⁷ in which Congress specifically tasked the SEC and the Public Company Accounting Oversight Board with the regulation and enforcement of such matters.

To the extent that violations of Sarbanes-Oxley or other applicable laws occur, the SEC, the DOJ, and the courts have proven more than capable of conducting investigations and, if necessary, taking enforcement actions. This is not to say that the FCC is completely reliant on the actions of other government agencies. The FCC has aggressively asserted its role in protecting the public interest, communicating as necessary with companies acting pursuant to a FCC authorization,²⁸ the SEC,²⁹ and the courts.³⁰ Further, the Commission has authority under Sections 205, 501, and 503 to investigate and take action against common carriers that violate the Act.³¹ However, OC-UCC has provided no cognizable justification for the initiation of a rulemaking designed to promulgate a new set of regulations under which the FCC would be called upon to regulate areas outside of its expertise and to duplicate the efforts of other

²⁶ See, e.g., Sarbanes-Oxley Act of 2002 §A201(a), Pub. L. No. 107-204, 116 Stat. 745 (2002) ("The Commission shall promulgate such rules and regulations, as may be necessary or appropriate in the public interest or for the protection of investors, and in furtherance of this Act.") ("Sarbanes-Oxley").

²⁷ *Id.*

²⁸ See, e.g., Letter from Michael K. Powell Chairman, Federal Communications Commission, to John W. Sidgmore, President and CEO, WorldCom, Inc. (Jul. 22, 2002) *available at* http://www.fcc.gov/commissioners/powell/72202_sidgmore.pdf.

²⁹ See, e.g., Remarks of Michael K. Powell, Chairman, Federal Communications Commission, Press Briefing on WorldCom Situation (Jun. 16, 2002).

³⁰ See, e.g., Letter from Michael K. Powell, Chairman, Federal Communications Commission to The Honorable Thomas Carlson, U.S. Bankruptcy Court for the Northern District of California re: In re At Home Corporation et al., Debtors, Case No. 01-32495 TC (Nov. 29, 2001) *available at* <http://www.fcc.gov/Speeches/Powell/Statements/2001/stmkp142.pdf>.

³¹ 47 U.S.C. §§ 205, 501, 503.

government agencies. Indeed, as OC-UCC itself acknowledges, the Commission has in the past taken steps to ensure that precisely such a duplication of effort does not occur.³²

IV. THE COMMISSION SHOULD NOT INITIATE A SECTION 403 INVESTIGATION OF WORLDCOM BECAUSE WORLDCOM IS OPERATING IN THE PUBLIC INTEREST

OC-UCC requests a Section 403 investigation as an “adjunct to the rulemaking.”³³

Because OC-UCC has failed to meet the Commission’s legal standard for the initiation of a rulemaking proceeding, OC-UCC’s request should be dismissed or denied.

Further, the initiation of a Section 403 investigation during the pendency of WorldCom’s reorganization in bankruptcy holds little or no potential benefit for consumers, which were not harmed by WorldCom’s accounting problems, but has great potential to harm WorldCom, which will, in turn, harm telecommunications competition and consumers. In Chairman Michael Powell’s first public response to the announcement of WorldCom’s bankruptcy, he urged the public and government officials not to act precipitously, stating, “[w]e have consistently urged those within governments to be quite conscious of the potential consequences and not inadvertently contribute to a self-fulfilling prophecy in which the company is harmed, not so much as a consequence of the wrong acts of particular individuals, but because of the reaction of government and its response to the situation.”³⁴ A Section 403 investigation is exactly the sort of harmful government action that Chairman Powell cautioned against. WorldCom has served, and continues to serve, the public interest by providing innovative and reliable competitive

³² See *Memorandum of Understanding between the Federal Communications Commission and the Equal Employment Opportunity Commission*, 70 FCC 2d 2320 (Aug. 21, 1978) (“[A]fter extensive negotiations, both agencies agreed to a tentative plan of cooperation and coordination to increase the effectiveness of each agency’s equal employment responsibilities and reduce possible duplication of effort.”)

³³ Petition at 30.

³⁴ Chairman Michael K. Powell, Press Briefing on WorldCom Situation (July 16, 2002) available at <http://www.fcc.gov/Speeches/Powell/2002/spmkp209.html>.

telecommunications services. Further, since its Chapter 11 filing, WorldCom has put in place new leadership that is taking every step necessary to make WorldCom a model of best corporate practices.

A. An Investigation under Section 403 will Not Benefit Consumers and could Adversely Affect WorldCom, which has Consistently Acted to Further the Public Interest through the Provision of Competitively Priced, High Quality, Innovative Telecommunications Services

In enacting the Telecommunications Act of 1996 (“1996 Act”), Congress intended “[t]o promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.”³⁵ WorldCom, which employs over 60,000 employees³⁶ and is the nation’s second-largest long-distance company and one of the largest competitive local carriers, is exactly the type of company that Congress intended to expand its local service offerings in the wake of the 1996 Act.³⁷ WorldCom is aggressively extending competition into local markets and has invested billions of dollars in facilities deployment, all to the benefit of American consumers. WorldCom also has been instrumental in the development and deployment of innovative telecommunications services that have spurred competition and

³⁵ Telecommunications Act of 1996, Pub. L.A. No. 104-104, 110 Stat. 56 (1996).

³⁶ Press Release, WorldCom, Michael D. Capellas Named Chairman and CEO of WorldCom, Inc. (Nov. 15, 2002) *available at* <http://www.worldcom.com/infodesk/news/news2.xml?newsid=6350&mode=long&lang=en&width=530&root=/infodesk/&langlinks=on&langpop=on>

³⁷ In addition to being the second largest long-distance company in the US and one of the largest competitive providers of local telephone service, WorldCom also is one of the largest carriers of international traffic and one of the biggest Internet backbone providers. WorldCom handles 70 million calls every weekend in the United States alone, serves thousands of business and residential customers globally, and connects over 3,400 networks around the world. Unless otherwise noted, facts regarding WorldCom’s business in this section are taken from WorldCom, *Why WorldCom will Thrive*, (Jan. 03, 2003) *available at* <http://www.worldcom.com/infodesk/forward/thrive/wcomwillthrive.pdf>.

innovation in the U.S. telecommunications market.³⁸ WorldCom's commitment to the provision of outstanding service has not faltered, even in the wake of its discovery of accounting irregularities perpetrated by a few of WorldCom's former employees and its subsequent filing for bankruptcy protection. In fact, the U.S. government has recognized WorldCom's continued commitment to providing cost effective and reliable advanced telecommunications services numerous times since WorldCom's Chapter 11 filing. On several occasions subsequent to the bankruptcy filing, WorldCom, which is one of the largest telecommunications providers to the federal government, was awarded new government contracts or had existing government contracts extended.³⁹

³⁸ For example, WorldCom created and launched The Neighborhood, a program bundling local and long-distance services into a single package. The Neighborhood is the communications industry's first large scale, credible competition to the local phone monopolies lock on the consumer market, having acquired over 1.5 million subscribers in 40 states, plus the District of Columbia, in just under one year. WorldCom *ex parte*, Delivering Local Competition to the Mass Market – Considerations for Transitioning to UNE-L Based Strategy, WC Docket No. 01-338 (Nov. 20, 2002). WorldCom also developed and implemented WorldCom Connection, one of the first network-based Internet protocol ("IP") communications products to serve the enterprise and small business markets, which consolidates local, long-distance and data services over one network for business customers, significantly improving network management, billing and support. WorldCom Connection earned Internet Telephony's 2002 Product of the Year award. Internet Telephony, *Special Focus* (Jan. 2003) at <http://www.tmcnet.com/it/0103/0103poty.htm>. WorldCom also launched the first integrated service for voice, data and video over an asynchronous transfer mode ("ATM") network, deployed the first network that combined synchronous optical network ("SONET") and ATM technologies, and entered into the first service level agreement for IP network services.

³⁹ In December, 2002, the U.S. Department of State ("DoS") selected WorldCom to provide advanced communications services to DoS facilities after an extensive competitive bidding process. The 10 year agreement is valued at up to \$360 million. Under the SPECTRUM contract, WorldCom will deliver telecommunications services including international private lines, satellite, and IP and ATM protocols, to DoS agencies around the world. The contract emphasizes regional approaches, strong network management, vendor accountability, managed satellite services and support and maintenance. In addition, under the terms of the contract, WorldCom will be a preferred provider for new DoS communication programs.

In November, WorldCom was awarded a contract to provide telecommunications services for veterans' hospitals, and was awarded an extension of its contract with the General Services Administration ("GSA") to provide long-distance phone service for 77 federal agencies after a thorough review of WorldCom's suitability to serve as a provider of critical government services. In awarding the contract to WorldCom, the GSA announced that "[i]n deciding to exercise the contract option, GSA indicated that [WorldCom's] performance has been consistent with the terms of the contract even after the announcements early this year of WorldCom's financial difficulties and its Chapter 11 bankruptcy filing. GSA is working closely with the Department of Justice, which is representing the government's interests in Bankruptcy Court to insure that FTS contract interests are being taken into account and are not impaired." WorldCom currently provides telecommunications services to some of the largest organizations in the federal government, including the Departments of Defense, Interior, Commerce, Health and Human Services and Transportation, the Federal Aviation Administration, the Social Security Administration and the Nuclear Regulatory Commission.

As Chairman Powell stated in his press briefing following WorldCom's Chapter 11 filing, "there is no greater sacrosanct role, either for carriers or the Commission, than to ensure the critical continuity of operations of those vital services for consumers, and critical consuming users, like the federal government."⁴⁰ WorldCom, despite its difficulties, has embodied the ideal of ensuring continuity of operations of vital services, and has had no disruptions in telecommunications services, no mass customer migrations, and no interruption in internet backbone service. The initiation of a Section 403 investigation would merely serve to injure WorldCom, and therefore competition and the public interest.

B. OC-UCC's Request for a Section 403 Investigation should be Denied because WorldCom has taken Prompt Corrective Action

OC-UCC's assertion that a Section 403 investigation is justified by WorldCom's "deep-rooted culture of fraud and deception" is absurd. As the OC-UCC itself recognizes, WorldCom's accounting irregularities did not result from a massive failure of WorldCom's corporate culture, but, from the actions of a few members of the company's *former* "senior management."⁴¹

On June 25, 2002, WorldCom voluntarily announced its discovery of certain accounting irregularities and immediately terminated and/or accepted the resignations of the officers responsible for the irregularities.⁴² Recognizing the need for prompt corrective action, WorldCom, with the oversight and cooperation of the Committee, proceeded to put in place an

⁴⁰ See Powell, *supra* note 34.

⁴¹ Petition at 31.

⁴² The company terminated Scott Sullivan, its chief financial officer and secretary, along with three accounting directors, and accepted the resignation of David Myers as senior vice president and controller. Mr. Sullivan and one of the accounting directors have been indicted by a federal grand jury in the Southern District of New York on charges including conspiracy and securities fraud. See Indictment, *U.S. v. Scott D. Sullivan and Buford Yates, Jr.*, 02 CR, (S.D.N.Y. Aug. 28, 2002). WorldCom is cooperating fully with these investigations.

entirely new management team.⁴³ Most notably, on December 16, 2002, the U.S. District Court for the Southern District of New York and the Bankruptcy Court approved the appointment of Michael D. Capellas as the President, Chief Executive Officer and Chairman of the Board of Directors of WorldCom.⁴⁴ Mr. Capellas has publicly recognized the importance of his role in ensuring WorldCom's lawful operation, stating,

“[w]hen I took this job I committed myself to the highest ethical standards. Each member of our executive management team has made the same pledge, and we will work to institute these standards throughout the company. Everyone should know that our company will do the right thing because it's the right thing to do.”⁴⁵

The Committee fully supported and endorsed the appointment of Mr. Capellas.⁴⁶ Simultaneous to Mr. Capellas' appointment, WorldCom appointed a new Chief Financial Officer and a Chief Restructuring Officer.⁴⁷ In the course of approving Mr. Capellas' appointment, U.S. District Court Judge Jed S. Rakoff, who is presiding over the Security and Exchange Commission's fraud

⁴³ On July 21, 2002, Dennis Beresford, Professor of Accounting at the Terry College of Business at the University of Georgia and former Chairman of the Financial Accounting Standards Board, and Nicholas deB. Katzenbach, former US Attorney General, Undersecretary of State and Senior VP and General Counsel of IBM, were elected to WorldCom's board of directors to oversee an internal investigation led by William McLucas, former chief of the enforcement division of the U.S. Securities and Exchange Commission. On August 29, 2002, C.B. Rogers, Jr., former Chairman and CEO of Equifax, Inc. was elected to the WorldCom board of directors. Mr. Rogers has served on the board of such companies as Sears, Roebuck & Co., Dean Witter, and Briggs and Stratton Corp.

⁴⁴ Mr. Capellas is the former president of the Hewlett-Packard Company and the former chairman and CEO of Compaq Computer Corporation. Press Release, WorldCom, Michael D. Capellas Named Chairman and CEO of WorldCom, Inc. (Nov. 15, 2002) *available at* <http://www.worldcom.com/infodesk/news/news2.xml?newsid=6350&mode=long&lang=en&width=530&root=/infodesk/&langlinks=on&langpop=on>.

⁴⁵ Press Release, WorldCom, WorldCom Announces Key Initiatives for First 100 Days (Jan. 14, 2003) *available at* <http://www.worldcom.com/global/about/news/news2.xml?newsid=6731&mode=long&lang=en&width=530&root=/global/about/&langlinks=off>.

⁴⁶ WorldCom Press Release, Michael D. Capellas Named Chairman and CEO of WorldCom, Inc., Nov. 15, 2002, *available at* <http://www.worldcom.com/infodesk/news/news2.xml?newsid=6350&mode=long&lang=en&width=530&root=/infodesk/&langlinks=on&langpop=on>.

⁴⁷ Press Release, WorldCom, WorldCom Implements Program to Restore Confidence, Rebuild Integrity and Business Practices (Nov. 4, 2002) *available at* <http://www.worldcom.com/global/about/news/news2.xml?newsid=5810&mode=long&lang=en&width=530&root=/global/about/&langlinks=off>.

case against WorldCom, complimented WorldCom's board of directors for making a series of positive reforms to the Company's corporate governance procedures, and for mandating strong and consistent cooperation with all government investigations and the District Court's monitoring process.⁴⁸

On December 17, 2002, every member of the company's board of directors remaining from before WorldCom's bankruptcy filing voluntarily resigned, stating that given the approval of Capellas as chairman and CEO, "it is now appropriate for each of us to stand down as directors and give him the opportunity to continue the process we have started to put in place substantive reforms and best governance practices."⁴⁹

Further, it must be remembered that it was WorldCom itself that discovered and reported its accounting irregularities to the SEC. WorldCom has, of its own initiative, taken a broad array of steps in order to correct the misconduct of a few former WorldCom employees that led to those irregularities. Under the direction of the new board and executive team, WorldCom has aggressively identified and removed those individuals who were responsible, by act or omission, for the misconduct which has damaged not only the company, but its shareholders and investors. In addition, a Special Investigative Committee of WorldCom's Board of Directors is overseeing an independent internal investigation, which is still in progress and is designed to identify the scope of wrongdoing and those responsible for it.⁵⁰ Personnel who are identified as having

⁴⁸ See Press Release, WorldCom, WorldCom Board Members Offer Resignation to Chairman and CEO Michael Capellas (Dec. 17, 2002) *available at* <http://www.mci.net/global/about/news/news2.xml?newsid=6610&mode=long&lang=en&width=530&root=/global/about/&langlinks=off>.

⁴⁹ *Id.*

⁵⁰ Michael D. Capellas, 100-day plan employee address (Jan. 14, 2003).

played a role in the implementation of unauthorized accounting practices will be terminated and the matter will be referred to the appropriate authorities.⁵¹

WorldCom also has implemented a variety of internal controls in order to ensure that no WorldCom employee is permitted to act outside the scope of the company's ethics and accounting procedures. The company is doubling its internal audit department staff and broadening its focus to include financial accounting matters, as well as operational matters. WorldCom's internal audit department also now reports directly to the Audit Committee of the company's board.⁵² In order to ensure that the company is subject to the appropriate external checks, WorldCom retained KPMG, LLP as its new external auditors.⁵³ Further, WorldCom has restructured its bylaws in order to comply with the requirements of the Sarbanes-Oxley Act of 2002, an act designed specifically to help corporations adopt structures that will prevent future instances of accounting-related misconduct. Finally, WorldCom has demonstrated its renewed commitment to corporate ethics by creating an ethics office, promulgating an enhanced code of ethics with a zero tolerance policy, and training all personnel on financial reporting and ethics.⁵⁴

WorldCom has clearly demonstrated its dedication to uncovering and curing the full scope of the misconduct that led to the necessity to its financial restatements. Further, as evidenced by WorldCom's voluntary reporting of its initial discovery of accounting irregularities, WorldCom has proven that it is willing to submit information stemming from

⁵¹ Michael D. Capellas, Build, Believe, Achieve (Jan. 14, 2003) *available at* <http://www-ca-atlas.worldcom.com/movingforward/TuesMainTent.pdf> (presentation from Capellas speech *supra* note 50).

⁵² Press Release, WorldCom, WorldCom Implements Program to Restore Confidence, Rebuild Integrity and Business Practices (Nov. 4, 2002) *available at* <http://www.worldcom.com/global/about/news/news2.xml?newsid=5810&mode=long&lang=en&width=530&root=/global/about/&langlinks=off>

⁵³ WorldCom, Form 8-K (May 15, 2002) *available at* <http://www.sec.gov/Archives/edgar/data/723527/000091205702020721/0000912057-02-020721.txt>.

⁵⁴ See Capellas *supra* note 51.

internal investigations to the proper authorities and to take whatever steps are necessary to identify and correct employee misconduct. WorldCom has fully cooperated with investigations conducted by the SEC, by the U.S. Attorney's Office for the Southern District of New York, and the Examiner appointed by the Bankruptcy Court, Richard Thornburgh, former Attorney General of the United States.⁵⁵ A Section 403 investigation, rather than revealing new information, will simply duplicate the results of investigations already in progress without any corresponding benefit to the public, and would place the Commission in a lead role in the investigation of misconduct that is outside its jurisdiction and within the purview of securities regulators and criminal enforcement authorities.⁵⁶ For all of these reasons, the Committee urges the Commission to disregard the hyperbolic allegations of OC-UCC and deny the Petition's request for a Section 403 investigation of WorldCom.

V. CONCLUSION

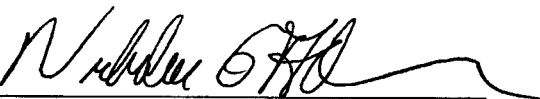
As set forth above, the Petition fails to meet the Commission's legal standard for the initiation of a rulemaking proceeding to consider extension of the Commission's character qualifications to all telecommunications providers because it does not provide sufficient reasons to justify the requested rulemaking. Further, the request for an investigation of WorldCom under Section 403 is rendered moot by this failure to provide sufficient justification for the initiation of a rulemaking proceeding, and is unnecessary and inappropriate in light of WorldCom's continued service of the public interest and the steps WorldCom has taken in recent months to

⁵⁵ WorldCom, Form SC 13D/A (Nov. 20, 2002) available at http://www.edgar-online.com/bin/irsec/finSys_main.asp?dcn=0000893750-02-000712&x=97&y=17.

⁵⁶ Chairman Powell has stated, "[w]e are not a criminal or civil enforcement authority; they're well aware of that. We don't imagine participating, which I think would be inappropriate, on the leading edge of criminal or civil investigations under the securities and banking laws. I think our role is perceived as helping them understand the kinds of things that they might encounter given that some of the investigations are in the communications sector." See Powell *supra* note 34.

correct past deficiencies. Therefore, the Committee urges the Commission to dismiss or deny the Petition.

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January 31, 2003

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Opposition was served via first-class mail, postage prepaid, on the 31st day of January 2003 and via facsimile and electronic mail on the 3rd day of February 2003 to the following:


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